

The Village of Northfield

REGULAR COUNCIL MEETING Agenda – July 25, 2018

Pledge of Allegiance

Call to Order; Roll Call; Approval of Minutes

Presentation of Petitions, Memorials and Remonstrances

Reports of Municipal Officers:

Jesse J. Nehez, Mayor
Tricia Ingrassia, Finance Director
Richard Wasosky, Engineer
Brad Bryan, Law Director

Department Heads:

John Zoligus, Police Chief
Jason Buss, Fire Chief
Jason Walters, Service/Building Superintendent

Reports of Municipal Boards and Commissions:

Alan Hipps, Planning Commission
Mayor Nehez, Recreation Board

Reports of Standing Committees:

Nicholas Magistrelli, Finance
Jennifer Domzalski, Roads and Public Works
Keith Czerr, Health and Welfare
Gary Vojtush, Wages and Working Conditions
Renell Noack, Fire and Safety
Alan Hipps, Buildings and Grounds

Legislation:

2018-42 – An Emergency Ordinance Amending Chapter 864 of the Business Regulation Code Relating to Open-Air Food Markets (Third Reading)

2018-49 – An Emergency Ordinance Amending Sections 660.17 and 660.18 of the Codified Ordinances Relating to Wee and Grass Control (First Reading)

2018-50 – An Emergency Authorizing the Mayor to Enter Into a Contract with Waste Management of Ohio, Inc. for the Collection of Residential Rubbish and Recycling (First Reading)

2018-51 – An Emergency Ordinance Establishing Chapter 1048 of the Codified Ordinances Relating to Use of Public Ways by Service Providers (First Reading)

Old Business; New Business; Announcements; Adjournment

**VILLAGE OF NORTHFIELD ORDINANCE NO. 2018-42
AN EMERGENCY ORDINANCE AMENDING CHAPTER 864 OF THE BUSINESS
REGULATION CODE RELATING TO OPEN-AIR FOOD MARKETS**

WHEREAS, in order to better protect the health, safety, welfare, and peace and enjoyment of the Village's residents and the public, the Mayor and Council desire to amend and update chapter 864 of the Business Regulation Code relating to Open-Air Food Markets.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Northfield, County of Summit, and State of Ohio:

SECTION 1. That the Council of the Village of Northfield hereby amends chapter 864 of the Business Regulation Code title of the Codified Ordinances as indicated in the attachment hereto.

SECTION 2. That the rest and remainder of the Codified Ordinances shall remain as presently drafted unless inconsistent herewith.

SECTION 3. That all formal actions of this Council concerning and relating to the deliberation and adoption of this Ordinance were taken in an open meeting of this Council or any of its legal committees and/or were in compliance with all legal requirements.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the public peace, health, and welfare of the Village of Northfield for the reason that it will assist with protecting the safety and peace and enjoyment of the Village's residents, visitors, and consumers, and this Ordinance shall take immediate effect upon its signature by the Mayor, or upon the expiration of time within which it may be disapproved by the Mayor, or upon its passage after its disapproval by the Mayor, as the case may be, pursuant to Village of Northfield Charter Section 4.11.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day
of _____, 2018.

Nicholas Magistrelli, Pres. Pro-Tem of Council

Jesse J. Nehez, Mayor

Approved as to Legal Form.

Bradric T. Bryan, Director of Law

I, Tricia Ingrassia, Clerk of Council of the Village of Northfield, Summit County, Ohio, do hereby certify that the foregoing Ordinance was duly and regularly passed by Council at a meeting held on the _____ day of _____, 2018.

Tricia Ingrassia, Clerk of Council

CHAPTER 864
Open-Air Food Markets

864.01	LICENSE REQUIRED; FEE.
864.02	LICENSE ISSUANCE.
864.03	CLEAN-UP BOND; INSURANCE.
864.035	DISPLAY OF LICENSE.
864.04	LICENSE REVOCATION; APPEALS.
864.05	PENALTY.

864.01 LICENSE REQUIRED; FEE.

No person shall operate an open-air food market within the Municipality without first obtaining a license therefor. The fee for such license shall be one hundred fifty dollars (\$150.00) per year or any portion thereof.

864.02 LICENSE ISSUANCE.

The Mayor ~~Building and Zoning Inspector~~ is hereby authorized and directed to issue the license to any individual, firm or corporation ~~of good reputation that satisfies the following requirements and all other requirements of this chapter:~~

(a) A notarized application; stating the name, address, telephone number, email address, and social security number or federal tax id number of the applicant; a description of the items to be sold; the proposed hours and days of the week on and during which the market will be open; and written permission from the property owner to operate the market on the property; is filed with and approved by the Building and Zoning Inspector, along with payment of the permit fee and any fire inspection fees;

(b) A zoning permit to conduct business at the proposed location is received by the applicant;

(c) All required permits from the County Department of Health have been issued;

(d) All structures and equipment, whether permanent or temporary, have been approved by the Building and Zoning Inspector, the County Building Department (if required by the County), and the Fire Department;

(e) The location of any permanent or temporary structures are located so as not to interfere with vehicular traffic, whether on Village streets or on-site, or the use of adjacent properties; and

(f) Sufficient paved parking is available on site as required by the Village's zoning and parking ordinances.

864.03 CLEAN-UP BOND; INSURANCE.

A clean-up bond of two thousand five hundred dollars (\$2,500) shall be deposited with the Finance Director at the time the license is issued, and upon approval, in writing, of the ~~Health and Welfare Committee of Council~~ Building and Zoning Inspector, such bond shall be returned at the end of each season. In addition, the applicant shall provide proof of casualty and premises liability insurance with limits in the amount of at least \$250,000 per occurrence and \$500,000 aggregate.

864.035 DISPLAY OF LICENSE.

The open-air food market license shall be prominently displayed on the premises at all times during which the market is open.

864.04 LICENSE REVOCATION; APPEALS.

The license may be revoked at any time, without return of the license fee, upon satisfactory proof that any provision of this chapter has not been met; other violations of law pertaining to the premises or business have been committed by the applicant or anyone that is conducting business on the premises pursuant to the license; fraud or a misrepresentation was committed in connection with the application or license or the conduct of activities on the premises; the health, safety, or welfare of the public is endangered by the business; or the applicant ceases to possess the qualifications required under this chapter violation of law or ordinance is permitted or committed on the licensed premises. Any revocation order or refusal to issue or renew a license by the Building and Zoning Inspector pursuant to this chapter may be appealed to the Village Council. Notice of such appeal shall be in writing and be filed with the Administrative Clerk/Building Department Secretary within thirty days of the Building and Zoning Inspector's decision. Within thirty days of the filing of such notice, Council shall proceed to hear the appeal, at which all parties interested in the issuance, denial, or revocation of the license shall be afforded an opportunity to be heard. Notice of the hearing may be provided, but is not required to be provided, to adjoining property owners. Council shall render a decision within thirty days of the conclusion of the hearing. Council may sustain, overrule, or modify the action of the Building and Zoning Inspector.

864.05 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a minor misdemeanor of the first degree and shall be fined not more than one hundred thousand dollars (\$1,000.00) for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

VILLAGE OF NORTHFIELD ORDINANCE NO. 2018-49

**AN EMERGENCY ORDINANCE AMENDING SECTIONS 660.17 AND 660.18 OF THE
CODIFIED ORDINANCES RELATING TO WEED AND GRASS CONTROL**

WHEREAS, the Mayor and Council desire to specify, clarify, and amend the requirements of Sections 660.17 and 660.18 of the Codified Ordinances relating to weed and grass control and clarify the potential financial penalties for organizations that violate those sections.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Northfield, County of Summit, and State of Ohio:

SECTION 1. That the Council of the Village of Northfield hereby and herein amends Sections 660.17 and 660.18 of the Codified Ordinances relating to weed and grass control as set forth in the attachment hereto.

SECTION 2. That the rest and remainder of the Codified Ordinances shall remain as presently drafted unless inconsistent herewith.

SECTION 3. That all formal actions of this Council concerning and relating to the deliberation and adoption of this Ordinance were taken in an open meeting of this Council or any of its legal committees and/or were in compliance with all legal requirements.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety, and welfare of the residents of the Village of Northfield, for the reason that it will enhance the aesthetic appearance of the Village, aid in the protection of Village residents, and assist with the operation of a Municipal department, and this Ordinance shall take immediate effect upon its signature by the Mayor, or upon the expiration of time within which it may be disapproved by the Mayor, or upon its passage after its disapproval by the Mayor, as the case may be, pursuant to Village of Northfield Charter Section 4.11.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day
of _____, 2018.

Nicholas Magistrelli, Pres. Pro-Tem of Council

Jesse J. Nehez, Mayor

Approved as to Legal Form.

Bradric T. Bryan, Director of Law

I, Tricia Ingrassia, Clerk of Council of the Village of Northfield, Summit County, Ohio, do hereby certify that the foregoing Resolution was duly and regularly passed by Council at a meeting held on the _____ day of _____, 2018.

Tricia Ingrassia, Clerk of Council

660.17 WEED AND GRASS CONTROL.

(a) Intent. The intent of this section is to uniformly address offensive weeds and offensive grass on occupied and vacant parcels of land in the interests of public health and safety and aesthetics. Enforcement shall be deemed necessary as a means of reducing pollen, litter, the spread of weeds, nuisance animals in populated areas, and blighting. It is not the intent of this section to establish standards for lawn care.

(b) Offensive Grass Defined. As used in this section, "offensive grass" means grass that is not well maintained or has attained a height of over six inches on any parcel of land in the Municipality after April 30 of any year. Grass that is not well maintained or exceeding six inches in height is hereby determined to be a public nuisance.

(c) Offensive Weeds Defined. As used in this section, "offensive weeds" means weeds that either: exceed six inches in height, contain mature seeds, are ready to spread, are of any type or height and located in gardens or flower or other beds, and/or are considered invasive weeds.

(d) Removal of Offensive Weeds and Offensive Grass by Owner or Occupant.

(1) No owner or occupant in possession or control of any parcel of land in the Municipality with a single family residential zoning classification, whether the parcel is improved or unimproved or occupied or vacant, shall fail to keep the entirety of such parcel, or any public right of way or tree lawn abutting such parcel, free from offensive grass and offensive weeds ~~exceeding six inches in height~~ as defined above.

(2) No owner or occupant in possession or control of any parcel of land in the Municipality with a zoning classification that is other than a single family residential zoning classification, whether the parcel is improved or unimproved or occupied or vacant, shall fail to keep the entirety of such parcel, or any public right of way or tree lawn abutting such parcel, free from offensive grass and offensive weeds as defined above.

(3) The Building and Zoning Inspector may exempt certain parcels that are more than two acres in size, either in whole or in part, from the requirements of subsection (c)(1) of this section, so long as the following conditions are met:

(i) The offensive weeds and offensive grass are deemed not to negatively impact neighboring properties and the neighborhood;

(ii) All of the area within one hundred feet of any public or private roadway, side adjacent properties, and areas abutting active and maintained parcels is maintained at a height of six inches or less; and

(iii) All of the area within one hundred feet of any residential or commercial building is maintained at a height of six inches or less.

(4) The Building and Zoning Inspector, or his or her designee, shall cause an annual notice to be published prior to April 15 of each year in a newspaper of general circulation in the Municipality, notifying property owners and occupants of the requirements of this ordinance.

(e) Procedure for Notice and/or Removal by Municipality. Upon information that offensive weeds or offensive grass are growing on land within the Municipality, written notice shall be provided to the owner and/or occupant having control of such parcel that offensive weeds or offensive grass exist upon such land, and that the same must be cut and/or destroyed within five days of the receipt of such notice. The written notice shall be sent by certified mail, return receipt requested, to the proper address; sent by registered mail to the proper address; hand-delivered to a resident of the property; or affixed to the front door or other conspicuous place on the property or front side of the primary structure on the property. In addition, notice may also be provided by placing a single notice in a newspaper of general circulation within the Municipality. Only one notice per calendar year is required per parcel. If, after notice has been provided in accordance with this ordinance, the Building and Zoning Inspector determines that a subsequent violation has occurred on a particular parcel, the Building and Zoning Inspector may proceed with any action permitted by this ordinance without any further notice being required.

(f) If the owner, occupant, or person having charge of the parcel in violation of this ordinance fails to comply with the notice to cut and/or destroy such offensive weeds or offensive grass, the Building and Zoning Inspector may request the Police Department to issue a citation to the property owner and/or occupant and/or the Building and Zoning Inspector may cause such offensive weeds or offensive grass to be cut and/or destroyed by employing the necessary labor and equipment to perform such tasks to bring the property into compliance with this ordinance. The charge for cutting and/or destroying the offensive weeds and/or offensive grass shall be one hundred dollars (\$100.00) per man hour and shall be charged back to the owner of the parcel.

(g) After the offensive weeds and/or offensive grass in violation of this ordinance have been cut and/or destroyed by the Municipality, the Administrative Clerk shall send a statement to the owner of the parcel demanding payment for the costs incurred by the cutting and/or destroying of such offensive weeds and/or offensive grass. If payment is not received by the Municipality within thirty days from the date of mailing such notice, a penalty of one hundred dollars (\$100) shall be imposed upon the owner of the parcel and added to the above charges. Council shall then make a written return to the County Fiscal Officer of its action under subsections (e) and (f) hereof, showing the total charges for the performance of the labor along with any fees related to the enforcement action, together with a proper description of the premises upon which these services were performed. Such amounts shall be entered upon the tax duplicate, shall be a lien upon the parcel from the date of entry and shall be collected as other

taxes are collected and returned to the Municipality by the County Fiscal Officer. Such remedy shall be in addition to the penalties provided in subsections (e, f, g, and/or h) hereof.

(h) ~~Whoever violates~~ A person violating this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section 698.02 a fine of not more than one hundred and fifty dollars (\$150.00). An organization convicted of this offense shall be guilty of a minor misdemeanor and be subject to the organizational minor misdemeanor fine threshold set forth in Section 698.04 of not more than one thousand dollars (\$1,000.00).

660.18 DUTY TO CUT AND KEEP CLEAN GRASS PORTIONS OF STREET OR ROAD RIGHTS-OF-WAY; DUTY TO KEEP GRASS CLIPPINGS AND YARD DEBRIS OUT OF ROADWAY AND SEWERS.

(a) No owner or occupant of lands abutting a State, County, or Village-owned street or roadway right-of-way, with the exception of State limited access highway rights-of-way, shall fail to keep the grass portion of the right-of-way free from offensive weeds, debris, or nuisances. In addition, weeds or grass that exceed six inches in height shall be cut, and grass and weeds of any size or type in the sidewalk areas shall be removed or destroyed. This section shall not pertain to grass that is located in the median of a divided highway or roadway.

(b) No owner or occupant of land in the Village, or any person or contractor that is performing work on any land in the Village, shall fail to clean up and remove from a street or roadway, any grass, leaves, or yard debris from their yard, or from the yard on which they are working, that fall or are blown onto a street or roadway.

(c) No owner or occupant of land in the Village, or person or contractor that is performing work on any land in the Village, shall place, sweep, or blow grass clippings, leaves, or yard waste into or in front of a catch basin, drain, or opening into the municipal or regional sewer system.

~~(b)(d) Whoever violates~~ A person violating this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section 698.02 a fine of not more than one hundred and fifty dollars (\$150.00). An organization convicted of this offense shall be guilty of a minor misdemeanor and be subject to the organizational minor misdemeanor fine threshold set forth in Section 698.04 of not more than one thousand dollars (\$1,000.00). In addition, whoever violates this section shall be subject to the requirements, penalties, and remedies set forth in Section 660.17.

VILLAGE OF NORTHFIELD RESOLUTION NO. 2018-50
AN EMERGENCY RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT WITH WASTE MANAGEMENT OF OHIO, INC. FOR THE COLLECTION
OF RESIDENTIAL RUBBISH AND RECYCLING

WHEREAS, the Village's current rubbish and recycling contract expires on October 1, 2018, and the Village advertised for bids pursuant to law for a new 5 year contract; and

WHEREAS, the bids were publicly opened on July 9, 2018; and

WHEREAS, Council has reviewed the bids and the qualifications of the bidders and has decided that the Alternative Two bid proposal of Waste Management of Ohio, Inc. is the lowest and best bid for the curbside collection of garbage and collection of recyclables from a community-wide bin at a centralized Village property location.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Northfield, County of Summit, and State of Ohio:

SECTION 1. That Council hereby authorizes the Mayor to enter into a 5 year contract commencing October 1, 2018 with Waste Management of Ohio, Inc. for the curbside collection of garbage and collection of recyclables from a community-wide bin at a centralized Village property location. Said contract shall conform substantially to the specifications contained in the bid package issued by the Village dated June 18, 2018 and Waste Management's July 6, 2018 Alternative Two bid proposal that is attached hereto.

SECTION 2. That all formal actions of this Council and any actions of its committees that resulted in those formal actions concerning and relating to the passage of this Resolution were taken in meetings open to the public and/or in compliance with law.

SECTION 3. That this Resolution is hereby declared to be an emergency measure necessary for the public peace, health, and welfare of the residents of the Village of Northfield for the reason that the current contract expires on October 1, 2018 and it is immediately necessary to commence with transition matters relating to the new contract, and this Resolution shall take immediate effect upon its signature by the Mayor, or upon the expiration of time within which it may be disapproved by the Mayor, or upon its passage after its disapproval by the Mayor, as the case may be, pursuant to Village of Northfield Charter Section 4.11.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2018.

Nicholas Magistrelli, President Pro-Tem of Council

Jesse J. Nehez, Mayor

Approved as to Legal Form.

Bradric T. Bryan, Director of Law

I, Tricia Ingrassia, Clerk of Council of the Village of Northfield, Summit County, Ohio, do hereby certify that the foregoing Resolution was duly and regularly passed by Council at a meeting held on the _____ day of _____, 2018.

Tricia Ingrassia, Clerk of Council

BID PROPOSAL/ALTERNATIVE TWO

(Without Curbside Recycling with Mandatory Use of Contractor's Containers)

The undersigned hereby proposes to contract for the collection of garbage, rubbish, yard waste, and recycling for the Village of Northfield upon the terms and conditions of this proposal, providing this proposal or any part hereof is accepted as a contract by the Village of Northfield.

A. Estimated number of residences served: 1084

B. Garbage, Rubbish, Yard Waste, and Recyclables Collection; Per residence price (MONTHLY BASIS) for single weekly pickup, contract term of five years; with mandatory use of the Contractor's containers for garbage, rubbish, and recyclables; and with no separate curbside collection of recyclables but with residents permitted to deposit recyclables in single recyclable bin located in the Village provided for in Section X of these Instructions.

Contract Year	Price Per Housing Unit Per Month
1 (10/1/18--9/30/19)	\$ 13.50 THIRTEEN DOLLARS + FIFTY CENTS
2 (10/1/19--9/30/20)	\$ 13.91 THIRTEEN DOLLARS + NINETY ONE CENTS
3 (10/1/20--9/30/21)	\$ 14.32 FOURTEEN DOLLARS + THIRTY TWO CENTS
4 (10/1/21--9/30/22)	\$ 14.75 FOURTEEN DOLLARS + SEVENTY FIVE CENTS
5 (10/1/22--9/30/23)	\$ 15.19 FIFTEEN DOLLARS + NINETEEN CENTS

Do You Provide a Senior Discount? ☒ Y ☐ N

Nature of Discount SIXTY CENTS .60

EXCEPTIONS TO SPECIFICATIONS OR OTHER PERTINENT CLARIFICATIONS, CONDITIONS, INFORMATION, FACTS, OR COMPONENTS OF ALTERNATIVE TWO BID (Additional Sheets may be attached if necessary):

RECYCLABLE SPECIFICATION SHEET ATTACHED

BIDDER: Waste Management of Ohio, Inc.

ADDRESS: 6705 Richmond Road, Glenwillow, OH 44139

PHONE, FAX, AND EMAIL VCrawford@wm.com | (440) 226-6321

BY: Signature

Ted Strenkowski

PRINT NAME: Ted Strenkowski

TITLE: District Manager ((440) 201-1221, tstrenko@wm.com)

DATE: 7-6-18

SINGLE STREAM SPECIFICATIONS

RECYCLABLES must be dry, loose (not bagged) and include **ONLY** the following

Aluminum cans - empty	Newspaper
PET bottles with the symbol #1 – with screw tops only - empty	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent and shampoo bottles, etc.) – empty	Uncoated paperboard (ex. cereal boxes, food and snack boxes)
Steel and tin cans – empty	Uncoated printing, writing and office paper
Phone books	Old corrugated containers/cardboard (uncoated)
Magazines, glossy inserts and pamphlets	

RECYCLABLES may include the following with the written consent of COMPANY:

Plastic containers with symbols #3-#7 – empty (no expanded polystyrene) - empty	Glass food and beverage containers – brown, clear, or green - empty
Aseptic containers	Cartons

NON-RECYCLABLES include, but are not limited to the following

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Mirrors	Window or auto glass
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics unnumbered
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any paper Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension	Propane tanks, batteries

DELIVERY SPECIFICATIONS:

Material delivered by or on behalf of Customer may not contain Non-Recyclables or Excluded Materials. "Excluded Materials" means radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous or toxic substance or material or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal, state or local laws or regulations, materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996 as amended, or other regulations or ordinances.

Company may reject in whole or in part, or may process, in its sole discretion, Recyclables not meeting the specifications including wet materials, and Customer shall pay Company for all costs, losses and expenses incurred with respect to such non-conforming Recyclables including costs for handling, processing, transporting and/or disposing of such non-conforming Recyclable Materials which charges may include an amount for Company's operating or profit margin. Without limiting the foregoing, and Customer shall pay a contamination charge for additional handling, processing, transporting and/or disposing of Non-Recyclables, Excluded Materials, and/or all or part of non-conforming loads and additional charges may be assessed for bulky items such as appliances, concrete, furniture, mattresses, tires, electronics, pallets, yard waste, propane tanks, etc.

Company reserves the right upon notice to discontinue acceptance of any category of materials set forth above as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials.

VILLAGE OF NORTHFIELD ORDINANCE NO. 2018-51

AN EMERGENCY ORDINANCE ESTABLISHING CHAPTER 1048 OF THE CODIFIED ORDINANCES RELATING TO USE OF PUBLIC WAYS BY SERVICE PROVIDERS

WHEREAS, increasing demands are being made on streets and rights of way to accommodate facilities of telecommunications and other service providers; and

WHEREAS, it is in the Village's best interest to manage the occupancy and use of the Village's streets and rights of way by telecommunications and other service providers to the extent permitted by law; and

WHEREAS, in 2018, the Ohio Legislature adopted Sub. H.B. 478, which amended Chapter 4939 or the Ohio Revised Code that provides that municipalities permit wireless service providers, cable providers, video service providers, and their designated agents to construct, maintain, modify, operate, or replace small cell facilities and support structures therefor in the public right-of-ways; and

WHEREAS, Council desires to adopt Chapter 1048 in conformance with the requirements and protections contained in the amendments to Chapter 4939 of the Ohio Revised Code; promote the health, safety, and welfare of the Village's residents and visitors; and protect Village property values and the aesthetic appearance of the Village.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Northfield, County of Summit, and State of Ohio:

SECTION 1. That Council hereby enacts Chapter 1048 of the Streets, Utilities, and Public Services Code as is indicated in the attachment hereto.

SECTION 2. That the rest and remainder of the Codified Ordinances of the Village of Northfield shall remain as presently drafted unless inconsistent herewith.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were rendered in an open meeting of this Council and/or were in compliance with all legal requirements.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the public peace, health, and welfare of the residents of the Village of Northfield for the reason that there is a need to accommodate and manage the increasing demand for the use of public rights of way in the Village, and that this Ordinance shall take immediate effect upon its signature by the Mayor, or upon the expiration of time within which it may be disapproved by the Mayor, or upon its passage after its disapproval by the Mayor, as the case may be, pursuant to Village of Northfield Charter Section 4.11.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2018.

Nicholas Magistrelli, Pres. Pro-Tem of Council

Jesse J. Nehez, Mayor

Approved as to Legal Form.

Bradric T. Bryan, Director of Law

I, Tricia Ingrassia, Clerk of Council of the Village of Northfield, Summit County, Ohio, do hereby certify that the foregoing Ordinance was duly and regularly passed by Council at a meeting held on the _____ day of _____, 2018.

Tricia Ingrassia, Clerk of Council

CHAPTER 1048
Use of Public Ways by Service Providers

1048.01 Scope of Chapter; Definitions.	1048.05 Notice of Work, Routine
1048.02 Consent to Occupy or Use the	Maintenance, and Emergency
Public Right-of-Way.	Work.
1048.03 General Public Right-of-Way	1048.06 Miscellaneous Provisions.
Use Regulations.	1048.99 Penalties and Other Remedies.
1048.04 Location, Relocation, and	
Removal of Small Cell Facility	
and Wireless Support Structure.	

1048.01 SCOPE OF CHAPTER; DEFINITIONS.

- (a) The purpose and intent of this Chapter is to:
- (1) Manage Occupancy or use of the Public Right-of-Way.
 - (2) Encourage the provision of advanced, competitive, telecommunications services on the widest possible basis to the businesses, institutions, and residents of the Village;
 - (3) Permit and manage reasonable access to the Public Right-of-Way of the Village for telecommunications service purposes on a competitively neutral basis.
 - (4) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the Village for the benefit of the public.
 - (5) Assure that the Village receives cost recovery for the Occupancy and use of the Public Right-of-Way in accordance with law.
 - (6) Assure that all Service Providers with Facilities in the Public Right-of-Way comply with the ordinances, rules, and regulations of the Village.
 - (7) Assure that the Village fairly and responsibly protects the public health, safety, and welfare.
 - (8) Enable the Village to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition, and technological development.
 - (9) Provide standards for the construction, installation, modification, operation, and removal of Small Cell Facilities and Wireless Support Structures in the Village's Right-of-Way.
 - (10) Preserve the character of the Village and protect property values.
 - (11) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically-pleasing installation of Small Cell Facilities and Wireless Support Structures.

(b) For the purposes of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (1) Accessory Equipment means any equipment used in conjunction with a Wireless Facility or Wireless Support Structure. "Accessory Equipment" includes utility or transmission equipment, power storage, generation, or control equipment, cables, wiring, and equipment cabinets.
- (2) Affiliate means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
- (3) Antenna(e) means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to, radio, television, cellular, paging, personal telecommunications service, internet, and microwave telecommunications.
- (4) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement, and extension of Facilities, but not including ordinary or Routine Maintenance.
- (5) Collocation or Collocate means to install, mount, maintain, modify, operate, or replace a Wireless Facility on a Wireless Support Structure.
- (6) Construct, Constructing, Construction, etc. means installing, repairing, replacing, or removing any Facility, regardless of the methods employed.
- (7) Decorative Pole means a pole, arch, or structure other than a street light pole placed in the public right of way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:
 - (A) Electric lighting;
 - (B) Specially designed informational or directional signage; or
 - (C) Temporary holiday or special event attachments.
- (8) Distributed Antenna System means a network or facility to which all of the following apply:
 - (A) It distributes radio frequency signals to provide Wireless Service.
 - (B) It meets the height and size characteristics of a Small Cell Facility.
 - (C) It consists of all of the following:
 - (i) Remote antenna nodes deployed throughout a desired coverage area;
 - (ii) A high-capacity signal transport medium connected to a central hub site; and
 - (iii) Equipment located at the hub site to process or control the radio frequency signals through the antennas.
 - (D) It conforms to the size limitations specified in Section 1048.01(b)(26) of this Chapter.

- (9) Eligible Facilities or Eligible Support Structure Request means any request for modification of an existing support structure or base station that does not substantially change the physical dimension of such support structure involving Collocation of new Wireless Facilities or Wireless Support Structures, removal of Wireless Facilities or Wireless Support Structures, or replacement of Wireless Facilities or Wireless Support Structures. A substantial change means:
- (A) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than ten percent (10%) or more than ten feet, whichever is greater, and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than six (6) feet;
 - (B) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than four (4) cabinets, whichever is less;
 - (C) The installation of any new ground-mounted equipment cabinets if there are no existing ground-mounted equipment cabinets;
 - (D) Any excavation or deployment outside of the current site of the Facility;
 - (E) Removal of any concealment elements of the Facility or the Wireless Support Structure; or
 - (F) Any change that does not comply with this Chapter or with state or federal law or regulations.
- (10) Engineer means the Engineer of the Village or Engineer's designee.
- (11) Excavate, Excavating, or Excavation means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into, or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any Construction activity.
- (12) Facilities or Facility means the plant, equipment, and property, including, but not limited to, Accessory Equipment, Antennae, cables, fibers, wires, pipes, conduits, ducts, pedestals, electronics, poles, mains, plant, equipment, and other appurtenances located under, on, or above the surface of the ground in the Public Right-of-Way of the Village for a Wireless Facility.
- (13) Lane Obstruction means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing, or removing any Facility, including: the lifting or removing of manhole or handhold covers; and the opening or accessing of

at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps, or other Facilities.

- (14) Micro Wireless Facility means a Small Cell Facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between Wireless Support Structures.
- (15) Monopole means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
- (16) Occupancy, Occupy, or Use means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or Facilities.
- (17) Overhead Facilities means utility poles and wires, cables, and other such equipment running between and on such poles, including the underground supports and foundations for such Facilities.
- (18) Person means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts, public utilities, any other entity, and individuals and includes their lessors, trustees, and receivers, but specifically excludes the Village itself.
- (19) Private Service Provider means any Person who, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 1048.02 of this Chapter, directly or indirectly owns, controls, operates, or manages a Wireless Facility within the Village's Public Right-of-Way used or to be used for the purpose of transmitting, receiving, distributing, or providing telecommunications or Wireless Services.
- (20) Public Right-of-Way means the surface of, and the space within, through, on, across, above, or below, any Public Street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the Village or other public entity or political subdivision.
- (21) Public Street means the paved and unpaved portion of any street, road, boulevard, drive, highway, freeway, parkway, lane, court, alley or other Public Right-of-Way in which the Village has an interest in law or equity and which has been acquired, established, dedicated, or devoted to street purposes.
- (22) PUCO or Public Utilities Commission of Ohio means the State Administrative agency, or successor, authorized to regulate and oversee certain Public or Private Service providers and Services in the State of Ohio.

- (23) Reconstruct, Reconstruction, etc. means substantial physical change to all or a portion of an existing Facility or System involving Construction in Public Streets, utility easements, or Public Right-of-Ways.
- (24) Routine Maintenance means repair, upkeep, replacement, or restoration of existing Facilities located in the Public Right-of-Way that requires no more than one (1) working day to complete, is not an Emergency, and does not include Excavation of the Public Right-of Way.
- (25) Service Provider means any Private Service Provider.
- (26) Small Cell Facility means a Wireless Facility that meets both of the following requirements:
- (A) (1) Each Antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
 - (2) All other Wireless Equipment associated with the Facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- (27) State means the State of Ohio.
- (28) Village means the Village of Northfield, Ohio
- (29) Village Property means and includes all real property owned by the Village, other than Public Streets and public easements, and all property held in a proprietary capacity of the Village, which are not subject to Public Right-of-Way consent and requirements of this Chapter.
- (29) Utility Pole means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications services.
- (30) Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
- (A) Equipment associated with wireless communications;
 - (B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- (31) Wireless Service means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using Wireless Facilities.
- (32) Wireless Service Provider means a person who provides wireless service as defined in section (a)(19) of this section of the Village's Codified Ordinances.
- (33) Wireless Support Structure means a pole, such as a monopole, either

guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or Utility Pole capable of supporting a Small Cell Facility. As used in this chapter, Wireless Support Structure excludes all of the following:

- (A) A utility pole or other facility owned or operated by a municipal electric utility; or
- (B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

1048.02 CONSENT TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Consent Required to Occupy Public Right-of-Way. No Person shall Collocate a Small Cell Facility or construct, maintain, modify, operate, or replace a Wireless Support Structure in the Public Right-of-Way without obtaining prior consent from the Village to do so.

(b) Initial Consent Presumed.

- (1) A person with a Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way on the effective date of this Chapter, who lawfully occupies the Public Right-of-Way on the effective date of this Chapter, shall be presumed to have initial consent of the Village for its existing Small Cell Facility and Wireless Support Structure to Occupy or use the Public Right-of-Way.
- (2) Initial presumed consent for Occupancy or use of the Public Right-of-Way is limited to the existing Small Cell Facility and Wireless Support Structure.
- (3) A Person with initial presumed consent is not relieved from compliance with this Chapter with respect to the ongoing Occupancy or Use of the Public Right-of-Way including, but not limited to, the Insurance and Indemnity requirements set forth in Sections 1048.02(e) and (f) of this Chapter.

(c) Application for Consent to Occupy or Use Public Right-of-Way.

- (1) The following Persons shall apply to the Village for consent to Occupy or use the Public Right-of-Way in accordance with the requirements of this Chapter, Ohio Revised Code Chapter 4939, and all applicable state and federal law and regulations on a form provided by the Village.

Any Person who:

- (A) Does not currently have an existing Small Cell Facility on a Wireless Support Structure in the Village's Public Right-of-Way and desires to Construct a new Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way; or
- (B) Has initial presumed consent or Village Consent to Occupy or Use the Public Right-of-Way for an existing Small Cell Facility on a Wireless Support Structure but is planning:

- (i) a Capital Improvement or Reconstruction of an existing Small Cell Facility on a Wireless Support Structure; or
 - (ii) to Construct an additional Small Cell Facility on a Wireless Support Structure anywhere in the Village.
- (2) Applicants are strongly encouraged to contact the Building and Zoning Inspector to request a pre-application conference. That conference will provide an opportunity for early coordination regarding proposed Facilities, locations, design, application submittal, and the approval process in order to avoid any potential delays in the processing and approval of applications. The application for Consent to Occupy or Use the Public Right-of-Way shall include the following information with respect to the applicant's or Service Provider's planned or existing Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way, as well as plans for any planned Capital Improvements or Reconstruction:
 - (A) The identity, legal status, and federal tax identification number of the applicant, including all Affiliates of the applicant or Service Provider in the State of Ohio that will Use or Occupy the Public Right-of-Way or are in any way responsible for the Small Cell Facility and Wireless Support Structure in the Public Right-of-Way.
 - (B) The name, address, and telephone number of the local officer, Agent, or employee responsible for the accuracy of the application or initial registration and available at all reasonable times to be notified in case of emergency.
 - (C) A description of the existing or proposed Small Cell Facility and Wireless Support Structure in the Village's Public Right-of-Way, including but not limited to, engineering plans, specifications, or a map, all in sufficient detail to identify:
 - (i) The location of the applicant's Small Cell Facility and Wireless Support Structure or proposed Small Cell Facility and Wireless Support Structure.
 - (ii) The location of all existing overhead and/or underground Facilities, Facility, Small Cell Facilities, or Wireless Support Structures in the Public Right-of-Way in the area of the applicant's or Service Provider's Small Cell Facility and Wireless Support Structure or proposed Small Cell Facility and Wireless Support Structure that is sufficient to show the impact of the applicant's Small Cell Facility and Wireless Support Structure on other existing Facilities, Facility, or Small Cell Facility and Wireless Support Structure.
 - (iii) The location of all overhead and underground utility easements.
 - (iv) Soil issues (a soil boring with associated testing shall be obtained in the area of any new proposed tower or pole to

determine the soil bearing capacity of the soil in order to design the depth of the tower or pole foundation).

- (D) A preliminary Construction schedule and completion date for all planned Capital Improvements.
 - (E) Evidence that the applicant or Service Provider has complied, or will comply, with indemnification and insurance requirements of this Chapter.
 - (F) Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO.
 - (G) A description of the Construction methods to be employed for the protection of existing structures, fixtures, and Facilities in or adjacent to the Public Right-of-Way.
 - (H) A description of the structures, improvements, and obstructions, if any, the applicant proposes to temporarily or permanently remove or relocate.
 - (I) A description of the impact of Construction, Reconstruction, installation, maintenance, or repair of a Small Cell Facility and Wireless Support Structure on trees in or adjacent to the Public Right-of-Way, together with a landscape plan for protecting, trimming, removing, replacing, and restoring any trees or areas disturbed during Construction.
 - (J) All applications shall be accompanied by the certification of a State of Ohio registered professional engineer that the drawings, plans, and specifications submitted with the application comply with the applicable technical codes, rules, and regulations.
 - (K) All applications which involve a Lane Obstruction or work on, in, under, across, or along any Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Department of Transportation's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The Village may require the Service Provider to use and employ the Village Police Department for Traffic Control.
 - (L) Such other and further information as may reasonably be requested by the Village.
- (3) The Village, by and through its Planning Commission, shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within ninety (90) days of the date on which the Person filed the application and all necessary information with the Village.
- (A) The Village may withhold, deny, or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based

on the health, safety, and welfare of the Village and in accordance with Village Ordinances and Ohio law. These reasons may include, but not be limited to, those criteria set forth in Section 1048.02(d) of this Chapter.

- (B) If the Village denies a Person's application to Occupy or Use the Public Right-of-Way, the Village shall provide its reasons in writing for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the Village's consent to Occupy or Use the Public Right-of-Way.
- (4) The Village's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the Village's consent for such Person to Occupy or Use the Public Right-of-Way.
- (5) Application Fee; Attachment Fee. Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee in the amount of Two Hundred Fifty Dollars (\$250.00) per site and assessed by the Building and Zoning Inspector to reimburse the Village for its administrative costs. The fee shall be adjusted upward by ten percent (10%) every five (5) years, rounded to the nearest five dollars (\$5.00), beginning in 2023. An application shall not be deemed complete until the fee is paid. In addition to the application fee, an annual fee shall be paid the Village for each Small Cell Facility attached to a municipally- owned Wireless Support Structure in the amount of Two Hundred Dollars (\$200.00). The attachment fee is adjusted upward by ten percent (10%) every five years, rounded to the nearest five dollars (\$5.00), beginning in 2023. The first year attachment fee shall be paid when the collocation is complete, and no later than January 1 of each year thereafter. The first year attachment fee shall not be prorated, regardless of the date that the collocation is completed.
- (6) Pursuant to Ohio Revised Code Section 4939.0312, a Person seeking to Construct, modify, Collocate, or replace more than one (1) Small Cell Facility or one (1) Wireless Support Structure may file a consolidated application for consent to occupy or use the Public Right-of-Way for up to fifteen (15) Small Cell Facilities in a single application or up to fifteen (15) Wireless Support Structure requests in a single application. Said single application may only address multiple Small Cell Facilities or multiple Wireless Support Structures if they each involve substantially the same type of Small Cell Facilities or substantially the same type of Wireless Support Structures. Small Cell Facilities shall be considered substantially the same type of Facility when the Small Cell equipment is identical in type, size, appearance, and function. Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance, and function and are to be located in a similar

location. Applications for Small Cell Facilities and Wireless Support Structures cannot be comingled. The Village may, at its discretion, separately address applications for Small Cell Facilities or Wireless Support Structures that are not substantially similar or for which incomplete information has been received or which are denied. In the case of a single application, each Small Cell Facility or Wireless Support Structure proposed to be Constructed, modified, or Collocated on, or replaced shall constitute a separate request for Consent to Occupy or use the Public Right-of-Way for purposes of tolling the response deadline set forth in this Chapter.

- (7) The time periods set forth herein may be tolled:
 - (A) By mutual agreement between the Person requesting consent and the Village; or
 - (B) Where the Village determines that the application is incomplete; or
 - (C) By the Village in the event it receives applications for at least fifteen (15) Small Cell Facilities or Wireless Support Structures contained in pending requests, in which case the Village may toll the ninety day period for up to twenty-one (21) days.
- (8) To toll the time period for incompleteness, the Village shall provide written notice to the Person requesting consent not later than thirty (30) days after receiving the request, clearly and specifically delineating all missing documents or information.
- (9) The time period resumes running again when the Person makes a supplemental submission in response to the Village's notice of incompleteness.
- (10) If a supplemental submission is inadequate, the Village shall notify the Person not later than ten (10) days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (7)(A) to (C) of this Section.

(d) Small Cell Facility in Public Right-of-Way. No Person shall occupy or use the Public Right-of-Way as a Small Cell Facility and Wireless Support Structure without first obtaining the approval of the proposed improvements by the Planning Commission. The Person proposing the improvements shall deliver to the Planning Commission eight (8) sets of the plans and specifications including all necessary details, profiles, and cross-sections for each proposed improvement. The Planning Commission shall approve or disapprove of such proposed improvements based on the following standards:

- (1) Compliance with all Village codes and laws and other governmental laws where required;
- (2) The recommendation of all administrative departments in regard to the improvements.

- (3) The effect of the proposed improvements on the right-of-way and in relation to all other improvements already installed or approved;
- (4) The proposed location of the improvements in regard to such items as sight lines, drainage, safety, and visual interference;
- (5) The size, bulk, and location of the improvements in relation to obtaining proper light, air, privacy, usable open space, and compatibility with surrounding uses;
- (6) The proper screening or placement of the improvements to minimize the negative effects of the improvements of the right-of-way or adjoining uses; and
- (7) Compliance with the United States Department of Transportation Manual or Uniform Traffic Control Devices (MUTCD) and Ohio Department of Transportation Ohio Manual of Uniform Traffic Control Devices (OMUTCD).

(e) Service Provider Insurance. As a condition of the consent to Occupy or Use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service provider and the Village as additional insured:

- (1) Comprehensive general liability insurance with limits not less than
 - (A) Five Million Dollars (\$5,000,000.00) for bodily injury or death to each Person;
 - (B) Five Million Dollars (\$5,000,000.00) for property damage resulting from any one accident; and
 - (C) Five Million Dollars (\$5,000,000.00) for all other types of liability.
- (2) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the Village of a written notice addressed to the Building and Zoning Inspector of such intent to cancel or not to renew.”

- (3) Within sixty (60) days after receipt by the Village of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this Section.
- (4) All insurance policies required herein shall be written with an insurance company authorized to do business in the State of Ohio in relation to

the specific type of insurance required.

- (5) Upon written application to, and written approval by, the Village's Director of Finance, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section. As part of the review process, the Director of Finance may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(f) General Indemnification. Each Service Provider shall protect, defend, indemnify, and hold the Village and its elected and appointed officials, officers, employees, agents, representatives, and volunteers harmless from and against any and all claims, lawsuits, judgments, costs, damages, liens, losses, and expenses, including reasonable attorney fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failures to act, or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors, or subcontractors in the design, Construction, Reconstruction, installation, operation, maintenance, repair, or removal of its Small Cell Facility and Wireless Support Structure, and in providing and offering Services over the Small Cell Facility and Wireless Support Structure, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter.

(g) Financial Surety.

(1) Each Service Provider owning or operating a Facility must procure and provide to the Village a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and Ohio Revised Code Chapter 4939. The financial surety must also be in an amount sufficient to cover the cost of removal, as established by the Engineer, of all Facilities owned or operated by that Service Provider.

(2) The Village may, at its discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or repair damage to any Village property caused by the owner or operator of the Facility, its agent, or the Facility itself. In such event, the owner or operator shall cause the financial surety to be replenished to its prior amount within ten (10) business days after the Village notifies the owner or operator that it has drawn on the financial surety.

1048.03 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 1048.02 shall be limited to a grant to Occupy or Use the specific Public Right-of Way and defined portions thereof, including the specific Small Cell Facility and Wireless Support Structure and location along the Public Right-of-Way, as approved by the Village.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent

granted under Section 1048.02 shall confer any exclusive right, privilege, license, or franchise to Occupy or Use the Public Right-of-Way of the Village, other than as specifically provided in said consent.

(c) Rights Permitted. No consent granted under Section 941.02 shall convey any right, title, or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(d) Height. For a new Wireless Support Structure, the overall height of the Wireless Support Structure and any Collocated Antenna shall not be more than forty (40) feet in height above ground level.

(e) Maximum Size. The Small Cell Facility must conform to the size limitations as defined for a Small Cell Facility in Section 1048.01(b)(26) of this Chapter.

(f) Color. The Small Cell Facility shall be a color or colors that are consistent with or most blends into the Wireless Support Structure on which they are installed, unless a different color is needed for public safety or service reliability reasons.

(g) Wiring and Cabling. Wires and cables connecting the Small Cell Facility shall be installed in accordance with the version of the National Electrical Code adopted by the Village and in force at the time of installation. In no event shall wiring and cabling serving the Small Cell Facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility, telephone utility, or other utility.

(h) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any Small Cell Facility and Wireless Support Structure, unless the Small Cell Facility is proposed to be attached to an existing Utility Pole that incorporated guy wires prior to the date of the request for consent.

(i) Grounding. The Small Cell Facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the Village regarding grounding of wireless facilities.

(j) Signage. Other than warning or notification signs required by federal law, or identification and location markings required by the Village, a Small Cell Facility and Wireless Support Structure shall not have signs installed thereon.

(k) Maintenance of Small Cell Facility and Wireless Support Structure. Each Service Provider shall maintain its Small Cell Facility and Wireless Support Structure in good and safe condition and in a manner that complies with all applicable federal, State, and local requirements.

(l) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares, and other measures as necessary and in accordance with applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle, or property by reason of such work in or affecting such Public Right-of-Way or property.

(m) Interference with the Public Right-of-Ways. No Service Provider may locate or maintain its Small Cell Facility and Wireless Support Structure so as to unreasonably interfere with the use of the Public Right-of-Way by the Village, by the general public, or by other Persons authorized to use or be present in or upon the Public Right-of-Way. All such Small Cell Facilities and Wireless Support Structures shall be moved by the Service Provider, temporarily or permanently, as determined by the Building and Zoning Inspector when necessary to protect the public, comply with the provisions of this Chapter, or otherwise comply with local, state, or federal laws. The expense or cost to move said Small Cell Facility and Wireless Support Structure shall be the responsibility of the Service Provider.

(n) Damage to Public and Private Property. No Service Provider nor any Person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any Village Property, Public Right-of-Way, or other public or private property located in, on, or adjacent thereto.

(o) Restoration of Public Right-of-Way, Other Ways, and Village Property.

- (1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way or Village Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days, at the Building and Zoning Inspector's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village.
- (2) If weather or other conditions do not permit the complete restoration required by this Section, the Service Provider shall temporarily restore the affected ways or property as directed by the Building and Zoning Inspector. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(p) Damage to Service Provider's Small Cell Facility and Wireless Support Structure. Unless directly and proximately caused by the willful, intentional, or malicious acts of the Village, the Village shall not be liable for any damage to or loss of any Small Cell Facility and Wireless Support Structure in the Public Right-of-Way of the Village as a result of or in connection with, but not limited to, any public works, public improvements, Construction, Excavation, grading, filling, salting, snow removal, or work

of any kind in the Public Right-of-Way by or on behalf of the Village;

(q) Duty to Provide Information. Within ten (10) days of a written request from the Village, each Service Provider shall furnish the Village with documentation sufficient to show that the Service Provider has complied with all requirements of this Chapter.

(r) Assignments or Transfers of Consent. Consent to Occupy or Use the Public Right-of-Way may be, directly or indirectly, transferred, assigned, or disposed of by sale, lease, merger, consolidation, or other act of the Service Provider, by operation of law or otherwise, without consent of the Village, so long as:

- (1) The Village is notified of the proposed transfer on or before the date of transfer; and
- (2) The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:
 - (A) All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 1048.02 of this Chapter; and
 - (B) Any other information reasonably required by the Village.

(s) Revocation of Consent. Consent granted by the Village to Occupy or Use the Public Right-of-Way of the Village may be revoked for any one of the following reasons:

- (1) Construction, Reconstruction, installation, location, operation, or Excavation at an unauthorized location.
- (2) Construction, Reconstruction, installation, location, operation, or Excavation in violation of Village or State safety and/or Construction requirements.
- (3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit application or registration required by the Village;
- (4) Abandonment of a Small Cell Facility and/or Wireless Support Structure in the Public Right-of-Way.
- (5) Failure to relocate or remove a Small Cell Facility and/or Wireless Support Structure or failure to restore the Public Right-of-Way, as required by this Chapter.
- (6) Insolvency or bankruptcy of the Service Provider.
- (7) The Small Cell Facility and/or Wireless Support Structure is in a state of disrepair which creates a public nuisance.
- (8) Violation of material provisions of this Chapter.
- (9) Construction under the consent is not commenced within two (2) years of the consent approval date.

(t) Notice and Duty to Cure. In the event the Building and Zoning Inspector believes grounds exist for revocation of consent to Occupy or Use the Public Right-of-Way or Construction Permit, the Building and Zoning Inspector shall give the Service

Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- (2) That rebuts the alleged violation or noncompliance; and/or
- (3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(u) Reservation by Village for Future Uses. The Village may reserve space for future public safety or transportation uses in the Public Right-of-Way, or on a Wireless Support Structure or pole owned by the Village. Said reservation of space shall be set forth in a documented plan, subject to the approval of the Planning Commission. A reservation of space by the Village shall not preclude placement of a pole or Collocation of a Small Cell Facility by a Private Service Provider; provided, however, that said pole or Wireless Support Structure shall accommodate any future use reserved by the Village. In the event it is necessary to replace any Village pole or Wireless Support Structure to accommodate the Collocation of a Service Provider's Small Cell Facility, the Service Provider shall pay for the replacement of the Village pole or Wireless Support Structure.

(v) Alternate Location. The Village may propose an alternate location to the proposed location of a new Wireless Support Structure that is either within one hundred (100) feet of the location set forth in a Person's application for Consent to Occupy or use a Public Right-of-Way, or is within a distance that is equivalent to the width of the Public Right-of-Way that the new Wireless Support Structure is proposed to be located on; whichever is greater. Any applicant or Service Provider shall be required to use the alternate location proposed by the Village, if the applicant or Service Provider has the right to use the alternate location on reasonable terms and conditions, and the alternate location does not impose technical limits or additional costs.

(w) Time for Completion. Any Collocation or Construction of a new Wireless Support Structure shall be completed within one hundred eighty (180) days after the issuance of a Consent to Occupy or Use the Public Right-of-Way. The Village and Service Provider may extend this completion date by mutual agreement.

(x) Underground Placement. No Small Cell Facility or Wireless Support Structure shall be constructed in a Public Right-of-Way that is located in an area in which it was required, or will be required under the Village Codified Ordinances, to install any electric Facilities, telephone Facilities, or any other Facilities underground. This prohibition shall not apply to the replacement of a Wireless Support Structure or the Collocation of a Small Cell Facility on a Wireless Support Structure that exists in said designated area. A Service Provider may apply to the Planning Commission for a waiver of the underground placement requirement for the Construction of a new

Wireless Support Structure if the Service Provider is unable to achieve its service objective under the following circumstances:

- (1) From a location in the Public Right-of-Way where the prohibition does not apply;
- (2) In a utility easement the Service Provider has the right to access; or
- (3) In or on other suitable locations or structures made available by the Village at reasonable rates, fees, and terms.

(y) Municipal Structures. A Service Provider may Collocate a Small Cell Facility on a Wireless Support Structure owned by the Village and which is located in the Public Right-of-Way, provided that the Person complies with the applicable design guidelines and conditions for such Collocation adopted by the Village that are consistent with said design guidelines under this Chapter. The Village may condition approval of said Collocation on the replacement or modification of the Village's Wireless Support Structure, at the Service Provider's cost, if the Village determines that replacement or modification of the Village's Wireless Support Structure is necessary. The Village shall retain ownership of any Village Wireless Support Structure that is replaced. The Village shall annually charge the amount of Two Hundred Dollars (\$200.00) per each Small Cell Facility Collocated on a Wireless Support Structure owner by the Village and located in the Public Right-of-Way.

1048.04 LOCATION, RELOCATION, AND REMOVAL OF SMALL CELL FACILITY AND WIRELESS SUPPORT STRUCTURE

(a) Excess Capacity. To reduce Excavation and congestion in the Public Right-of-Way, it is the Village's goal to encourage Service Providers to share occupancy of utility poles, as well as to construct, whenever possible, excess available space on utility poles for occupancy of future Small Cell Facilities in the Public Right-of-Way. The Service Provider may charge a reasonable market lease rate to other Providers for occupancy of the additional utility pole space as reimbursement.

(b) Relocation or Removal of Facilities. Within thirty (30) days following written notice from the Village, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change, or alter the position of any Small Cell Facility and Wireless Support Structure in the Public Right-of-Way whenever the Village shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

- (1) The Construction, Reconstruction, repair, maintenance, or installation of any Village or other public improvement in or upon the Public Right-of-Way.
- (2) The operations of the Village or other governmental entity in or upon the Public Right-of-Way.

(c) Removal of Unauthorized Small Cell Facility and Wireless Support Structure. Within thirty (30) days following written notice from the Village, any Service Provider or other Person that owns, controls, or maintains any unauthorized Small Cell Facility,

Wireless Support Structure, or related appurtenances in the Public Right-of-Way shall, at its own expense, remove the Small Cell Facility, Wireless Support Structure, or appurtenances from the Public Right-of-Way of the Village. After the thirty (30) days have expired, the Village may remove the Small Cell Facility, Wireless Support Structure, or appurtenances from the Public Right-of-Way at the other party's expense. A Small Cell Facility and Wireless Support Structure is unauthorized and subject to removal in the following circumstances:

- (1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;
- (2) Upon the abandonment of a Small Cell Facility and Wireless Support Structure in the Public Right-of-Way of the Village;
- (3) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located, or maintained without the consent to do so, except as otherwise provided by this Chapter;
- (4) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located, or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;
- (5) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located, or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not permitted pursuant to the Village's consent to Occupy or Use the Public Right-of-Way or Construction Permit.

(d) Emergency Removal or Relocation of Small Cell Facility and Wireless Support Structure. The Village retains the right and privilege to cut or move any Facilities, or stop work on any Construction, Reconstruction, installation, operation, or Excavation, located in the Public Right-of-Way of the Village, as the Village may determine to be necessary, appropriate, or useful in response to any need to protect the public health, safety, or welfare.

(e) Abandoned and Damaged Facilities.

(1) A Service Provider shall provide written notice to the Village of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within 365 days from the date the use was discontinued, the Facilities shall be considered a nuisance and the Village may remove the Facilities at the expense of the Service Provider.

(2) In the event the Facilities are damaged, the Service Provider shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than thirty (30) days after obtaining written notice that the Facilities are damaged. If the damaged Facilities are not repaired within thirty (30) days, then the damaged Facilities shall be considered a nuisance and the Village may remove the Facilities at the expense of the Service Provider.

1048.05 NOTICE OF WORK, ROUTINE MAINTENANCE, AND EMERGENCY WORK.

(a) Notice of Work. Except in case of Emergency, as provided in Section 1048.05(c), or for Routine Maintenance as provided in Section 1048.05(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the Village without ten (10) calendar days advance notice to the Village and obtaining consent to Occupy or Use the Right-of-Way pursuant to Section 1048.02, if required.

(b) Routine Maintenance and New Service Orders.

- (1) A Service Provider need not obtain a Construction Permit or notify the Village prior to or after commencing any Routine Maintenance or New Service Orders that do not include the Construction in, or Excavation or Lane obstruction of, a Public Right-of-Way or closing of a Public Street.
- (2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than two (2) hours, the Service Provider shall provide the Village with forty-eight (48) hours advance written notice prior to commencing the Routine Maintenance or New Service Order, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider shall meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable governmental regulations.

(c) Emergency Work. In the event of the need for any unexpected repair or Emergency work, a Service Provider may commence such Emergency response work as required under the circumstances, provided that for Emergency work that requires Excavation of a Public Right-of-Way or Lane Obstruction or closing of a Public Street, the Service Provider shall notify the Village as promptly as possible before commencing such Emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the Service Provider shall notify the Building and Zoning Inspector.

1048.06 MISCELLANEOUS PROVISIONS.

(a) Other Village Ordinances. In the event that any provision of this Chapter conflicts with any other provision of the Village's Codified Ordinances or other ordinances or resolutions of the Village, the more restrictive provision shall govern.

(b) Preemption by State and Federal Laws. Except as may be preempted by applicable State or Federal law, rates, regulations, and orders, this Chapter shall apply and be controlling over each Service Provider engaged in the business of transmitting, supplying, or furnishing of Services originating, passing through, or terminating in the Village.

(c) Exemption for Village-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to Facilities, Micro Wireless Facilities, or Private Facilities owned or operated by the Village or any of its operations.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part, by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

1048.99 PENALTIES AND OTHER REMEDIES.

(a) Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with any or the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct Offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

- (i) In lieu of the criminal penalties set forth above, the Building and Zoning Inspector may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.
- (ii) The Civil Forfeiture shall be in an amount payable to the Village of not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.
- (iii) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.
- (iv) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the Village may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the Village if, in the Village's sole discretion, it determines that additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.
- (v) The Service Provider may dispute the alleged violation by providing the Village with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The Village shall set a date for hearing of the alleged violation before the Planning Commission no sooner than thirty (30) days and not later than sixty (60) days from receipt of the notice of dispute.

(vi) The Village shall issue a written decision on the Service Provider's alleged violation within thirty (30) days after the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the Village finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any administrative or judicial remedies the Village may have, at law or in equity, for enforcement of this Chapter.